

*In the Matter of Kimberly Adams, et al., Correction Officer Video Test  
for the Law Enforcement Examination (S9999E)*

DOP Docket No. 2005-4271

**(Merit System Board, decided November 3, 2005)**

The appellants on the attached list appeal their scores for the Correction Officer Video Test portion of the Law Enforcement Examination (LEE) (S9999E). It is noted that the appellants failed this portion of the examination. These appeals were consolidated due to common issues presented by the appellants.

The Correction Officer Video Test (COVT) was given to those candidates who passed the Law Enforcement Services examination and were certified by the Department of Corrections from the S9999E eligible list for consideration as State Correction Officer Recruits. This was a pass/fail examination. Candidates who passed continued in the selection process which included a background investigation, written psychological examination, urinalysis, fingerprinting, completion of pre-employment documents, a home interview, employment verification, and medical and psychological evaluations by licensed physicians. Candidates who failed the COVT are no longer under consideration as State Correction Officer Recruits, but are still eligible for other LEE titles for which they may have applied.

The COVT consists of 83 multiple choice situational questions presented by video. Candidates were shown a vignette of human interaction in a correctional institution, which was described up to a point requiring a candidate to make a response or judgement. Candidates were then given options to take regarding the situation. The situations did not include any responses which required prior experience or knowledge of rules or procedures. The candidates had ten seconds to bubble an answer sheet with their answer before the next vignette was presented. Marking more than one answer was counted as an incorrect response.

On appeal, some appellants contend that the test was invalid because they failed. In support of this argument, they state that no study material was given or available, they needed proper training on rules and guidelines of a Correction Officer, the correction officer training academy teaches how to handle inmates, a study group costs money to attend and others who attended these groups or were given study material were unfairly advantaged, they were not told this was pass/fail, you can't fail if there are no right or wrong answers, this is really a psychological test, they couldn't

enforce the rules since they didn't know them, the test required on-the-job training and knowledge, and that failing just means they need training.

Some appellants request a hearing on this matter. Others request a review of this examination or to be allowed to retake it. Some appellants state that the questions were confusing, subjective, iniquitous, discriminatory, and biased against minority females. Several ask who grades the examination and how, why this wasn't mentioned when they took the LEE, and why they have to take it this year when it wasn't given last year. One candidate argues that he needed to know the passing point and examination guidelines prior to taking the test, and to not know this is "manifestly unjust."

Several appeals of test administration were received. Among appeals of test administration, the following issues were appealed: the time given to answer the questions was inadequate, the screen could not be seen or could not be clearly seen, medical issues at the time interfered with performance, stress interfered with performance, the "bubbled" answer sheet was incorrectly filled out, time was taken to make corrections to the bubbled answer sheet, the questions were missed when going to the bathroom while the video was running, and the instructions were missed when the candidate was at the back of the room.

## CONCLUSION

Regarding requests for a hearing, hearings are granted only in those limited instances where the Board determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented which would require a hearing. See *Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

The LEE requires only one application for various entry-level law enforcement titles. Candidates could indicate their preference on the application for seven title areas: Municipal Police Officer, Other Police, Juvenile, State Ranger, County Corrections, State Corrections, and Sheriff title areas. The LEE consisted of three components: a written ability portion, Work Styles Questionnaire and Life Experience Survey. The written ability portion consisted of 50 multiple choice questions; the Work Styles Questionnaire consisted of 74 items; and the Life Experience Survey consisted of 42 items. Candidates were not required to be notified of the COVT at the time they were contacted to take the LEE, as the LEE was administered for a broad range of titles and was not specific to State Correction Officers. It is noted that the COVT is currently mentioned on the NJDOP website at [http://www.state.nj.us/personnel/public\\_safety/entry-](http://www.state.nj.us/personnel/public_safety/entry-)

[level opps.htm](#). Also, only those candidates who successfully passed the LEE, indicated interest in appointment as a State Correction Officer Recruit, and whose names appear on the certification for that title, are required to take the COVT.

The purpose of the COVT is to test the candidates' judgement and ability to work effectively with inmates and staff. The job analysis conducted with correctional officers, supervisory personnel, managers and inmates supplies strong evidence to show that good human interaction skills contribute significantly to a safe and secure corrections environment. Job experts repeatedly point out that the consequences of officer actions often have significant implications for the officer and for the organization. In a correctional setting, the officer/inmate relationship is the primary, or only, form of inmate control. There is a large potential for being manipulated by inmates. Individuals poorly equipped to deal with this type of setting can, and have, ended up subject to criminal proceedings.

The examination is not training material and no prior knowledge of the subject matter was necessary in order to answer the questions. The COVT was designed to be relevant and practical for candidates who had no exposure to the correctional setting, and the situations presented were as relevant as possible to the full range of the job of a Correction Officer. The critical job behaviors were covered by the COVT. For example, defined dimensions or behaviors included "communication skills," "professional relations with inmates," "unemotional responses to inmate provocation," and "enforcement of rules." No study material was provided and no knowledge of subject matter was tested. Candidates were instructed to use their own common sense and the information provided in the situations to answer the questions. Most of the questions had four options from which to choose, but some had only two. Options were weighted from 1 to 5 points, and the maximum possible score was 415. The passing point was 330. Each appellant scored lower than the passing point. It is noted that approximately 75 percent of the candidates pass the COVT. Individual scores have not been provided to the entire candidate population and will not be provided here for the same reasons as examination review was precluded, as explained below.

Regarding examination review, candidates were not permitted to review the examination or the answer key. Such a review cannot be permitted in order to maintain test security and ensure that the test could be used again. The Commissioner of Personnel is authorized to preclude candidate review of exam materials. *N.J.A.C. 4A:4-6.4(e)*. The COVT was purchased from a vendor, who also scored the responses. Precluding test review is crucial under the special circumstances of this matter. The vendor has invested significant amounts of time and money in producing this test. If

the test questions and answers become known to candidates, it will render the test useless. In view of the large number of appellants, there is a real risk that some of these individuals would share information about the test with other candidates, or would use such information themselves the next time the test is given. See *In the Matter of Steven T. Dill, et al.*, Docket No A-2674-01T2 (App. Div., September 2, 2004) (Merit System Board properly denied access to examination materials for teamwork component for Fire Fighter examination.)

The appellants have challenged the overall validity of the test. Even if the appellants had access to the test questions, they would not be able to prove that the test is invalid. The test itself has already been validated through appropriate psychometric concepts, consistent with the EEOC Uniform Guidelines on Employee Selection Procedures. Permitting the appellants access to review the questions and answers would serve no purpose, except to expose the test and render its future use moot. Also, full access to the scoring would impair the Department's ability to contract with private testing firms to provide this service.

Prior to administration of the COVT, a job analysis was conducted for the Correction Officer title. Surveys were distributed to 170 incumbents throughout the State of New Jersey and critical characteristics and behaviors for effective job performance were verified. The COVT fulfilled requirements for two acceptable validation strategies, content validity and validity generalization from criterion-related studies of the same job in other settings. In addition, criterion-related validity has been determined in major studies in five states wherein a significant correlation was found between the COVT and job performance evaluations or ratings. Knowledge or abilities which were identified as essential to the position, such as reading comprehension or mathematical ability, were not included in the COVT. Hundreds of correction officers, managers and other corrections professionals representing all aspects of the field participated in the job analysis and test development. The job analysis provides strong evidence that good human interaction skills contribute significantly to a safe and secure corrections environment, and the COVT reflects important components of the job. The EEOC Uniform Guidelines on Employee Selection Procedures define steps required for transporting a test for use at other organizations. It is not required that empirical criterion-related validation studies be duplicated at each organization where a test is implemented. The job analysis within the New Jersey Department of Corrections ensured the relevance of the material in the COVT to local job conditions. That is, the Correction Officer jobs in New Jersey represent the same job family with the same basic skill and aptitude required as do the jobs studied in prior validation studies.

According to the Validation Report prepared by the test maker, when the passing point is set, many variables are taken into consideration including, but not limited to, the worth of the officer to the organization, the cost of turnover (replacement cost), the impact of poor judgment on institutional security, and the desire to give the candidate the benefit of the doubt. The Department of Corrections needs to select candidates whose expected performance is at least average with respect to the current officer population. This means selecting candidates whose predicted rating is the average rating, 4.6, or higher. The average rating of 4.6 is associated with a test score of 337. The passing point for this administration was set at 330, which is considered marginal. Scores lower than 330 are considered poor.

The appellants claim that the test was discriminatory or unlawful. In reply, the COVT was developed to minimize impact on protected groups. Repeated studies show no differences in test scores based on gender or age. There are small but statistically significant differences for minorities. The difference in scores between African American and Caucasian applicants is about half a standard deviation. However, a statistical analysis of criterion-related differential validity for the studies found no difference in the predictive accuracy of these tests for African Americans or other groups.

Regarding test administration, *N.J.A.C.* 4A:4-6.4 (Review of examination items, scoring and administration) states that appeals pertaining to administration of the examination must be filed in writing at the examination site of the day of the examination. Candidates were told of their right to appeal at the test site and forms were provided. All of the appellants filed their appeals by mail after receiving their scores. Therefore, appeals of test administration issues are untimely.

The test was designed to be administered to small or large groups of candidates. In this case, the Department of Corrections tested up to 40 candidates in a room per day, using two rooms. Many times, less than 40 candidates showed up for their examinations. Before the examination started, some candidates were called to the back of the room as part of the background check was being conducted prior to the start of the examination. Mr. Hurlburt was called to the back of the room, but he was not asked to leave the building. The monitor does not begin reading the instructions until a dismissed candidate leaves the building. Since Mr. Hurlburt did not leave the building, he did not miss any instructions. He also did not file an appeal of this issue at the test center.

Candidates were allowed to reschedule due to any reason at anytime before or up to 30 days after their scheduled test date, and make-up examinations for illness, death in the family, and previous commitments

were granted indefinitely up to the date of expiration of the list. All candidates who missed their scheduled test were given an additional 30 days to be rescheduled. The Department of Corrections has indicated that no candidate informed a staff member (either civilian or uniformed) of sickness during the COVT. Had they done so, their condition would have been addressed and any request to be rescheduled would have been accommodated.

In his appeal, Mr. Sooy states that he was on medication for pain after surgery, but did “not want to prejudice your agency with further arrangements for testing in my behalf.” Mr. Sooy did not bring his condition to the attention of the test monitor. Mr. Canino submits medical documentation that he was suffering blurred vision with focusing difficulties the day before the examination. He was diagnosed with myopia in both eyes, correctable to 20/40, and was then fitted with contact lenses. He states that he also was diagnosed with a corneal abrasion (unsupported by the medical documentation which diagnosed him with myopia), and that this interfered with his ability to see the video on the test date. He states that he was not given an opportunity to tell the monitor about his condition. In reply, again, testing personnel cannot accommodate an individual who does not indicate that he is impaired or who does not ask for a make-up examination. Candidates are allowed to ask questions and speak to the monitor until the time the video starts. After that, any interruptions would be disruptive the the candidate population being tested. Mr. Canino, as well as any other candidate, had ample opportunity to explain his situation up to the time the video test was started.

Candidates were given one-and-a-half hours to answer 83 questions. A break was given after question 50 to allow candidates to use the bathroom. Candidates were also told to go to the bathroom if necessary prior to starting the examination. Candidates were asked if they could see the screen, if they couldn't see the screen, if they could hear, and if they wanted to move, prior to commencing the video. If they moved, they were asked if they could now see. They were told to move to a seat where they had a clear view of the screen and could hear. They were instructed that once the test began, it would not be stopped or rewound for missed questions. They were told the number of questions, the amount of time given, and that a ten-minute break would be given after question 50 which was 45 minutes into the test. Speaking was prohibited during breaktime, but candidates were allowed to speak to the monitor.

In addition, candidates were told to answer every question, and erase completely if they wanted to change answers. The bubbled answer sheets were scored by computer and scores were available approximately two days

after submission. Candidates do not need to know passing points in order to take an examination. Even if candidates had known that the passing point, this information is not helpful as a “standard” that they could try to achieve. The appellants have taken the examination, and in fairness to other candidates, they cannot be given the same examination again. They have not provided a sufficient basis to establish that the conditions they cite affected their examination performance, or to warrant additional credit on the examination.

A thorough review of the record indicates that the appellants have failed to support their burden of proof in these matters.

## **ORDER**

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum